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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 DAVID D. DELAY,

14 Defendant.
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Case No. CR15-175RSL

ORDER DENYING MOTION
FOR NEW TRIAL

16 This matter comes before the Court on defendant's "Motion for a New Trial and/or to
17 Arrest Judgment." Dkt. # 538. The Court has considered the parties' filings, exhibits, and
18 memoranda. For the following reasons, the motion is DENIED.

19 In November 2017, following a two-week trial, a jury found defendant David D. Delay
20 guilty on seventeen counts of sex trafficking, child pornography, and obstruction of the
21 enforcement of federal sex-trafficking laws. Dkt. # 523. He brings the instant motion arguing
22 that the timing and pace of discovery entitles him to a new trial, that his convictions for two
23 related statutes were multiplicitous, and that his obstruction conviction is invalid.

24 First, Delay argues he is entitled to a new trial because "[t]he Government used the
25 voluminous nature of the discovery to its advantage by trickling it out in batches in such a
26 manner that the Defendant was placed at a disadvantage." Dkt. # 538 at 2. He also argues that
27 the timing of trial deprived him of a speedy trial. Dkt. # 538 at 5.
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1 Delay alludes to deadlines in Local Criminal Rule 16(a)(2), but that rule explicitly
2 provides that the Court may modify the timing of discovery if needed. See LCrR 16(g). Delay
3 also acknowledges that the Rule’s deadlines would have been unrealistic in this case. Otherwise,
4 Delay cites no rule, statute, or precedent indicating the government’s conduct during discovery
5 violated a rule or discovery standard that would entitle him to a new trial. The Court finds Delay
6 has not shown prejudice attributable to the government’s mode of discovery disclosures, see
7 United States v. Baker, 10 F.3d 1374, 1398 (9th Cir. 1993), or to the delay between indictment
8 and trial, see Barker v. Wingo, 407 U.S. 514, 530 (1972); see also Dkt. # 434 at 2 . The Court
9 accordingly finds that justice does not require a new trial. See Fed. R. Crim. P. 33(a).

10 Second, Delay argues his convictions for transporting persons to engage in prostitution,
11 18 U.S.C. § 2421, amount to lesser-included offenses of his convictions for coercing persons to
12 travel and engage in prostitution, id. § 2422. Delay’s transportation convictions (§ 2421)
13 required additional proof beyond what the coercion convictions (§ 2422) required—namely, the
14 transportation convictions were proved by testimony, travel details, and hotel records showing
15 actual transportation of Delay’s victims across state lines. The Court finds the transportation
16 convictions do not amount to lesser-included offenses. See United States v. Jose, 425 F.3d 1237,
17 1241 (9th Cir. 2005).

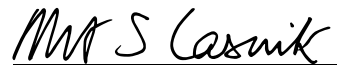
18 Delay also argues the government did not prove the *mens rea* element of his obstruction
19 charge under 18 U.S.C. § 1591(d), because the government failed to prove he knew of the
20 investigation’s federal nature or the details of his codefendant’s cooperation in furtherance of
21 the statute’s enforcement against him. Delay does not invoke a sufficiency-of-the-evidence
22 claim, but contrary to his assertions the government presented sufficient evidence for the jury to
23 conclude he knowingly obstructed, or attempted to obstruct, enforcement efforts against him.
24 See United States v. Hernandez-Quintania, 874 F.3d 1123, 1125 (9th Cir. 2017). He need not
25 have known the nature or details of those enforcement efforts to violate the statute.

26 Finally, Delay argues the obstruction provision’s application to him was
27 unconstitutionally vague. The obstruction provision prohibits “obstruct[ing], attempt[ing] to
28 obstruct, or in any way interfer[ing] with or prevent[ing] the enforcement of [the statute].” Id.

1 The indictment charged that Delay sought to frustrate his codefendant's cooperation in the
2 government's enforcement of the statute against him, and the government presented evidence to
3 that effect. The Court finds that the obstruction provision gave Delay fair notice of the conduct it
4 proscribed, and its application was not unconstitutionally vague. See United States v. Harris,
5 705 F.3d 929, 932 (9th Cir. 2013).

6 For the foregoing reasons, defendant's motion, Dkt. # 538, is DENIED.
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8 DATED this 6th day of February, 2018.
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12 Robert S. Lasnik
13 United States District Judge
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